

SB 46 – Unborn life as a compelling state interest

This amendment leaves the fundamental privacy rights of a minority of Montanans vulnerable to the wishes of future legislatures.

Within our right to privacy are the protections that Montanans treasure most deeply. It guarantees to every person the ability to make their own decisions about the matters that are considered especially private and especially personal; matters that we don't expect and don't want the government to be involved in. More succinctly put, Art. II, Sec. 10 protects our right to be left alone, as much as possible.

The phrase "compelling state interest" is a term used by the courts to describe a government's reason or purpose that is so important, and so necessary, that we are willing to yield a small margin of our protected liberties. Courts have typically required the government to make its case whenever it tries to infringe upon a fundamental right. We ask the government to show detailed facts and specific reasoning why its purpose is so important that we should give up our rights. Examples of legitimate compelling state interests generally are tied to protecting against a serious, bona fide public health or safety risk.

Instead of requiring the government to continue to make its case in these types of specific instances when it wants to infringe upon our privacy, SB 46 seeks to place into our constitution a broad exception to our privacy clause.

This would be the first time our state constitution would explicitly define a particular compelling state interest.

If passed, this amendment would say that when it comes to regulating pregnancies, from conception to birth, the government has a free pass to infringe upon our fundamental right to privacy. This amendment removes any constitutional barrier against state regulation of a pregnancy.

By drafting a particular purpose as a "compelling state interest," this amendment would give the state a blank check to legislate and regulate every aspect of every pregnancy.

The most complex, difficult, and private decisions that most women will make is if, when, and how to become pregnant and give birth. Reasonable, honorable, decent, compassionate and loving people can and do differ on these issues, just as they do on decisions regarding marriage, religion, and expression of our personal beliefs. Currently, our constitution recognizes that these are the types of decisions that are rightly left to each individual.

The terrible irony of this amendment is that it will make no difference in a woman's federally protected right to pre-viability abortions, or the state's current ability to regulate some abortion methods.